882.

SUPREME COURT OF THE UNITED STATES.

No. 111.

BENJAMIN D. HARRIS, PLAINTIFF IN ERROR,

vs.

JAMES D. WALL.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

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J. & G. S. Gideon, printers.

BENJAMIN D. HARRIS
vs.
WINTER & WALL.

Pleas before the honorable Samuel J. Gholson, district judge of the United States, at a circuit court of the United States held at Jackson, in and for the ninth circuit and southern district of Mississippi, at the November term, in the year of our Lord one thousand eight hundred and forty-four.

Be it remembered that heretofore, to wit, on the 29th day of February, A. D. 1840, the following writ of summons issued out of the clerk's office of the court aforesaid in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Southern district of Mississippi, ss:

The President of the United States, to the marshal of the southern district of Mississippi, greeting:

We command you, without delay, to summon Thacker W. Winter and James M. Wall, citizens of the State of Mississippi, that they be and appear at the circuit court of the United States to be held at the town of Jackson, in and for the southern district of Mississippi, on the first Monday of May next, to answer to Benjamin D. Harris, a citizen of the State of Alabama, of a plea that they render unto him ten thousand three hundred and ninety-one dollars and six cents, with interest thereon at the rate of eight per cent. per annum from the thirteenth day of February, eighteen hundred and thirty-nine, which to him they owe, and from him unjustly detain, to his damage five thousand dollars; and that they do file their plea or defence with the clerk of said court on or before the meeting of the same, or judgment will be given against them by default; and have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, the 29th day of February, [L. S.] A. D. 1840, and in the 64th year of the independence of the United States. WM. BURNS, *Clerk.*

Marshal's return.

"Executed on Wall this 9th March, 1840—the other defendant not found. W. M. GWIN, *Marshal.*
By E. M. WARD, *Deputy.*

UNITED STATES OF AMERICA,
Southern district of Mississippi, ss:

The President of the United States, to the marshal of the northern district of Mississippi, greeting:

We command you, without delay, to summon Thacker W. Winter

and James M. Wall, citizens of the State of Mississippi, that they be and appear at the circuit court of the United States to be held at the town of Jackson, in and for the southern district of Mississippi, on the first Monday of May next, to answer to Benjamin D. Harris, a citizen of the State of Alabama, of a plea that they render unto him ten thousand three hundred and ninety-one dollars and six cents, with interest thereon at the rate of eight per cent. per annum from the thirteenth day of February, eighteen hundred and thirty-nine, which to him they owe, and from him unjustly detain, to his damage five thousand dollars; and that they do file their plea or defence with the clerk of said court on or before the meeting of the same, or judgment will be given against them by default; and have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, the 29th day of February, A. D. 1840, and in 64th year of the independence of the United States. [L. S.]

WM. BURNS, *Clerk*.

Marshal's return.

1840, April 9th. Executed on T. W. Winter by leaving a true copy of the within summons with a free white person, over the age of sixteen years, at his place of above.

ADOLPHUS G. WIER,
Marshal No. dist. Miss.
By his deputy, J. M. DUNN.

And on the same day of sueing out the writs aforesaid, the said plaintiff, by Rives and Shelton, his attorneys, filed his declaration herein against the said defendants in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Southern district of Mississippi:

Circuit court, ninth judicial district, May term, 1840.

Benjamin D. Harris, who is a citizen of the State of Alabama, plaintiff, by attorney, complains of Thacker W. Winter and James M. Wall, who are citizens of the State of Mississippi, and residents in the southern district of Mississippi aforesaid, defendants, in custody, &c., of a plea of debt, that they render unto him ten thousand three hundred and ninety-one dollars and six cents, with interest thereon at the rate of eight per centum per annum from the thirteenth day of February, in the year of our Lord eighteen hundred and thirty-nine, which to him they owe, and from him unjustly detain. For that the said defendant Winter, by the name and signature of T. W. Winter, and the said defendant Wall, by the name and signature of Jas. M. Wall, heretofore, to wit, on the thirteenth day of February, in the year of our Lord eighteen hundred and thirty-nine, at Clinton, Mississippi, to wit, in the southern district of Mississippi aforesaid, made their certain joint and several writing obligatory, commonly called a single bill, sealed with their seals, and to the court now here shown, the date whereof is

the same day and year aforesaid, and then and there delivered the same to the said plaintiff, and thereby then and there promised they or either of them, and bound themselves, their heirs, &c., on or before the first day of January, one thousand eight hundred and forty, to pay to said plaintiff, his heirs or assigns, the sum of ten thousand three hundred and ninety-one dollars and six cents, with eight per cent. interest thereon from the date thereof, (meaning with interest thereon at the rate of eight per centum per annum,) from the thirteenth day of February, in the year of our Lord eighteen hundred and thirty-nine, till paid.

Nevertheless, said defendants have not, nor has either of them, although thereto often requested, as yet paid said plaintiff said sum of ten thousand three hundred and ninety-one dollars and six cents, with interest as aforesaid, or any part thereof; but the same to pay to the said plaintiff, said defendants, and each of them, have hitherto altogether neglected and refused, and yet wholly neglect and refuse, to the damage of said plaintiff of five thousand dollars; and therefore he brings his suit, &c.

RIVES & SHELTON,
Plaintiffs' attorneys.

"*Copy of note.*"

$10,391 6. CLINTON, MISS., *February*, 1839.

On or before the first day of January, eighteen hundred and forty, we, or either of us, promise and bind ourselves, our heirs, &c., to pay to Benjamin D. Harris, his heirs or assigns, the sum of ten thousand three hundred and ninety-one dollars and six cents, with eight per cent. interest thereon from the date hereof.

Given under our hands and seals, the day and date above written.

T. W. WINTER, [SEAL.]
JAS. M. WALL. [SEAL.]

And the said defendant, James M. Wall, by his attorney, comes and defends the wrong and injury, when, &c., and for plea says, the plaintiff, his action aforesaid, to have and maintain against him, ought not, because, he says, that the writing sued on was executed by him as surety of the said Thacker W. Winter, in renewal of certain other notes, which other notes were executed by said Winter for and in consideration of slaves, by the said plaintiff introduced into the State of Mississippi as merchandise, and for sale, after the third day of May, eighteen hundred and thirty-three, and by him sold to the said defendant Winter, pursuant to his intent in their introduction aforesaid, and for no other or further consideration; and this the said James M. Wall is ready to verify; wherefore, &c.

And for further plea in this behalf, the said defendant James M. Wall says, actio non, because, he says, the writing obligatory in the declaration mentioned, was executed by these defendants to the said plaintiff, in consideration of certain slaves by the said plaintiff introduced into the State of Mississippi for sale, and as merchandise, after the first day

of May, eighteen hundred and thirty-three, and which said slaves were by him, the said plaintiff, in the State of Mississippi, in pursuance of the intention with which they were by him introduced into the State aforesaid, sold to the defendant Winter, and for no other or further consideration whatever; and this said James M. Wall is ready to verify, &c.

And for further plea in this behalf, the said defendant James M. Wall says, actio non, because, he says, that the said plaintiff, heretofore, to wit, in the year of our Lord 1836, did introduce into the State of Mississippi, from one of the United States, as merchandise, certain slaves above the age of fifteen years, without having previously obtained a certificate, signed by two respectable freeholders in the county of the State from whence said slaves were brought, containing a particular description of the stature and complexion of such slaves, together with the name, age, and the sex of the same; and, furthermore, that the slaves therein mentioned had not been guilty or convicted of murder, burglary, arson, or other felony, within their knowledge or belief, in such State. Such certificate being signed or acknowledged before the clerk of the county of the State or Territory where the same was given, and certified by said clerk, specifying in such certificate that the persons, whose certificates were affixed thereto, were respectable freeholders of the county and neighborhood in which they resided. And because, he says, that the said plaintiff, having so introduced said slaves into the State of Mississippi as merchandise, did sell to the defendant Winter the said slaves, without having caused [them] to be registered with the register of the orphan's court of the county where such slaves were sold. Such certificate as aforesaid he, the said plaintiff, the seller, not having previously sworn that he believed the contents of such certificate to be just and true. And because, they say, that the said plaintiff did sell the said slaves, so introduced for the purpose aforesaid into the State aforesaid, without having complied with the provisions of the 4th and 5th sections of an act, entitled "An act to reduce into one the several acts concerning slaves, free negroes, and mulattoes," passed June 18th, 1822; and that the writing declared on was executed for, and in part consideration of, the said slaves, so by the said plaintiff sold to the said defendant Winter, who was the purchaser thereof, and for no other consideration, and this the said James M. Wall is ready to verify; wherefore, &c.

MAYES & CLIFTON, *P. D.*

And the said plaintiff by attorney says, that by reason of any thing by said defendants in their said first plea alleged, he ought not to be barred from having and maintaining his action thereof aforesaid against the said defendants, because he says that the said writing obligatory sued on in this case was not executed by the said defendants in renewal of any note whatever, which notes had been executed for and in consideration of slaves by the said plaintiff introduced into the State of Mississippi as merchandise and for sale, after the first day of May,

in the year eighteen hundred and thirty-three, and by him sold to said defendant Winter, pursuant to any such his intent in their introduction as alleged by the said defendants as aforesaid in their first plea aforesaid; and this the said plaintiff prays may be enquired of the country, &c.

RIVES & SHELTON,
For plaintiff.

And the defendants do the like.

MAYES & CLIFTON,
For defendant.

And as to the second plea of the said defendants in this behalf heretofore pleaded, the said plaintiff saith, *precludi non*, because he says that by reason of any thing in said second plea alleged, he ought not to be barred from having and maintaining his action thereof aforesaid against the said defendants, because he says that the writing obligatory sued on this action was not executed by said defendants in consideration of any slaves whatever, by the said plaintiff introduced into the State of Mississippi for sale as merchandise, after the first day of May, eighteen hundred and thirty-three, and which in pursuance of the intent with which, as is alleged by said defendants in their said second plea, they were introduced into the State, were sold to the said defendant Winter; and this the said plaintiff prays may be enquired of by the country, &c.

RIVES & SHELTON,
For plaintiff.

And the defendants do the like.

MAYES & CLIFTON,
For defendants.

And the said plaintiff, as to the third plea by the said defendants in this behalf heretofore pleaded, saith, that the same, and the matters therein contained in manner and form as the same are above pleaded and set forth, are not in law sufficient to bar or preclude him, the said plaintiff, from having or maintaining his aforesaid action thereof against them the said defendants, and that he, the said plaintiff, is not bound by law to answer the same, and this the said plaintiff is ready to verify; wherefore the said plaintiff prays judgment, &c.

RIVES & SHELTON,
For plaintiff.

And the defendants, as to the plaintiff's demurrer to their third plea, join in the demurrer, and pray the judgment of the court thereon. In short, by consent.

MAYES & CLIFTON,
For defendant.

And afterwards, to wit, at the said November term of the court aforesaid, to wit, on the thirteenth day of November, in the year of our Lord one thousand eighteen hundred and forty-four, until which time

this cause was legally continued, came as well as the plaintiff by his said attorneys, as the said defendant Wall by his said attorneys; and it appearing to the satisfaction of the court, that the writ herein has been duly executed on the said defendant Winter, and he failing to appear, though solemnly called herein, wholly made default. And a jury being called to try the issues joined as to the defendant Wall, came, to wit, Jesse Gardiner, J. C. Beall, Wm. Hyde, J. M. Sharp, E. Oden, W. Mosely, J. W. Daniels, R. Fisher, S. A. Wilson, J. V. Caldwell, J. W. Rucker, and C. B. Baron, who being empannelled, tried, and sworn, to speak the truth upon the issues joined, do say upon their oaths, they find for the defendant, James M. Wall, upon the issues joined.

Bill of exceptions tendered by plaintiff.

Be it remembered, that on the trial of this cause the defendant read to the court the notice attached to the deposition of Wm. S. Rayner, and service of the same, all marked A, and made part of this bill of exceptions.

JACKSON, *May* 1, 1843.

MR. B. D. HARRIS, or MESRS. RIVES & SHELTON, his attorneys at law:

Take notice, that on Wednesday next, the third day of May, A. D. 1843, at the clerk's office of the circuit court of the United States for the southern district of Mississippi, between the hours of 8 o'clock A. M., and 3 o'clock P. M., at the town of Jackson, I shall take the deposition of William S. Rayner (about to depart the State) to be read on the part of the defendant *debenessee* in a certain action at law, depending in said court, wherein said Harris is plaintiff, and Winter and Wall, defendants; where you can attend.

Yours, &c.,

GEO. W. MILLER,
U. S. commissioner.

Marshals' return: Executed by handing Wm. M. Rives a copy between the hours of 11 A. M., 12 M., May 1, 1843.

ANDERSON MILLER,
Marshal.
By Z. P. WARDELL, *D. M.*

The deposition of William S. Rayner, taken before the undersigned commissioner of affidavits, in and for the southern district of Mississippi, at the clerk's office of the circuit court of the United States, for the southern district of Mississippi, in the town of Jackson, between the hours of 8 o'clock A. M. and 3 P. M., on the 3d day of May, A. D. 1843, according to a notice by me issued and hereto annexed; said deposition to be read as evidence on the part of the defendant *debenessee* in the trial of a certain action at law, depending and mentioned in the circuit court of the United States for the southern district of Mississippi, wherein Benjamin D. Harris is plaintiff, and Winter and Wall, defendants.

The said witness being by me first duly examined, cautioned, and sworn according to law, did depose and say, in answer to interrogatories put by the defendants, (William M. Rives, esq., attorney for plaintiff, being present at said examination, but declined putting any interrogatories to said witness,) as follows, to wit:

Question by defendants. Are you not well acquainted with the parties in this suit, plaintiff and defendants?

Answer. I am.

Question 2nd. By same. How long have you known the plaintiff in this cause; and do you or not know what has been his occupations?

Answer. I know B. D. Harris since 1834 or '5; and his occupation has been that of a negro trader, from the State of Virginia and Alabama to the State of Mississippi; I understand he resides in Madison county, State of Alabama.

Question 3d. By same. Have you or not been intimate for a long time with the business transactions of said Harris, having acted as his agent in his absence?

Answer. I have been intimate with most of his business transactions, growing out of the sale of slaves by him in Madison county, and on one or two occasions have acted as his agent in his absence, he having most of his negroes in my neighborhood.

Question 4th. By same. Look upon the bond attached to the plaintiff's declaration, now shown you, and also the paper now shown you, and marked exhibit A, attached to this deposition, and state all you know in relation to the same?

Answer. This deponent avers that he believes the paper marked exhibit A, and the signature thereto, to be in the handwriting of the plaintiff in this case, B. D. Harris, having often seen him write, and therefore well acquainted with his handwriting. He also knows, that on or about the date of said paper marked (A,) said B. D. Harris sold to Thacker W. Winter, one of the defendants in this cause, a number of slaves, brought into this State by said Harris, as merchandize, from the State of Alabama; the price given for said slaves by said Winter he, this deponent, does not now remember. He states that there was various trades between said Winter & Harris, and renewal of notes given, as deponent believes, in the sale of negroes, as he knows of no other transactions between said parties than what occurred in that way. In regard to the bond filed with plaintiff's declaration, and now shewn him, he states that, in the spring of 1839, he had a conversation with the plaintiff, who had felt, as he repeatedly informed deponent, great anxiety about his debt against Winter; in which conversation he informed deponent that he had, as he thought, finally secured said debt by renewing a note for the balance, extending the time of payment, and getting the defendant, James M. Wall, bound as security for said debt; he, this deponent, frequently saw the papers and notes of said Harris; that he believes he has never seen among the papers the bond sued on, which he believes to be the same spoken of by said Harris in such conversation.

Question by same. From your acquaintance with the business trans-

actions of said B. D. Harris with the defendant Winter, do you or not believe that any business transactions took place between said parties, except what related to the buying and selling of slaves?

Answer. I believe I was acquainted with most of his business transactions as before stated, and from my knowledge of said transactions, which took place in my immediate neighborhood, I feel satisfied there was no business transactions between said parties except what related to the buying and selling of slaves; and further this deponent saith not.

WM. S. RAYNER.

UNITED STATES OF AMERICA,

Southern district of Mississippi, sct:

I, George W. Miller, commissioner of affidavits, &c., in and for the southern district of Mississippi, do hereby certify, that the foregoing deposition of William S. Rayner was taken, subscribed, and sworn to before me, and by me reduced to writing in the presence of said witness, at the time and place mentioned in the caption thereof, at the time of which I was attended by James M. Wall, one of the defendants, and Wm. M. Rives, esq., attorney for plaintiff, who declined putting any interrogatories to said witness. I further certify, that I am not a counsel for either party, or interested in the event of said cause.

Given under my hand and seal at Jackson, this third day of May, A. D. 1843.

GEO. W. MILLIER,
U. S. commissioner.

Exhibit A.

I have this day sold to T. W. Winter the following negroes, to wit: Joshua, Ben, Anthony, Tom, Peter, Isaac, Thornton, Sam, Eliza and child, ten in all, and I bind myself to give to said Winter a bill of sale for said negroes as soon as he makes me the necessary arrangements.

BENJ. D. HARRIS.

Novr. 15th, 1836.

And then offered to read to the jury the deposition of said Rayner, having proven to the court before that offer, that when said deposition was taken said Rayner was on his way to the Republic of Texas, to reside there, and that he now was a citizen of and resided in said Republic. To the reading of said disposition the plaintiff by his counsel objected, but the court overruled his objection, and permitted said deposition to be read to the jury, (see copy of same above written.)

Be it further remembered, that after the defendant had read to the jury the deposition of Benjamin G. Sims, which was done subject to exceptions, the plaintiff moved the court to exclude from the jury that part of said deposition which proved, or tended to prove, said plaintiff to be a negro trader; but the court overruled said motion, on the ground that the counsel of the plaintiff had agreed in writing on said deposition, that the same might be read in evidence.

The deposition of B. G. Sims, taken by consent, to be read in evidence on the trial of the above named cause.

1. If you know the parties to this suit, state if you have any knowledge of any trade or contract at any time between them, and when such contract was made, and what was the subject matter of it?

Answer. In the fall of 1836, in October or November, one of the defendants, Mr. Winter, and the plaintiff Harris, was at my residence in Clinton, they being just from Livingston, Madison county, at which time Mr. Winter informed me, in the presence of Harris, he had purchased ten or twelve negroes from said Harris on time, I think on twelve months credit. Both parties spent the night at my house; during the evening, I purchased a negro from Harris; in the course of conversation he stated he had brought the negroes originally from Virginia, but that he had detained them some time in Alabama, perhaps ten or twelve months; that he had brought the negroes from Alabama about six or eight weeks previous to the sale of the negro to myself, and the negroes to Winter.

2. Will you state to what point they were going, and for what purpose? Where was the contract spoken of made? What was the occupation of Harris? And in what line of trade was he, or had he been previously engaged?

Answer. They were on their way to Vicksburg, to complete the contract for the purchase of the negroes. I understood from Harris it was made at Livingston, in Madison county, at which place the negro I purchased of Harris was at the time I purchased the negro. I knew Harris before and subsequent to the transactions above alluded to, and knew him only as a negro trader.

Were you related to Winter; and if so, were you familiar with his business? Please state if you knew of any other trade or transactions between said Harris and Winter at any time; and if so, what was the nature of it?

Answer. Mr. Winter and myself were brothers-in-law; we were particularly intimate, and endorsers for each other. We were both in the habit of communicating to each other our business, particularly any very large transactions. I never knew of any other trade with Winter and Harris than the one above referred to.

Was you acquainted with the plaintiff, such as to enable you to say that negro trading was his general employment?

My acquaintance with the plaintiff was limited, inasmuch as he was a non-resident of the State; whenever I saw him, he had either negroes for sale, or was on his return to his residence after a sale of negroes brought by him for sale to this State.

G. B. SIMS.

Sworn to and subscribed before me, this 6th day of May, A. D. 1844.

W. H. BROWN, *U. S. Commr.*

B. When sworn to, it is agreed this disposition of B. G. Sims may be used in the cause stated in the caption as evidence.

RIVES & SHELTON & THOMPSON, *for pl'ff*.
MAYES & CLIFTON, *for def't Wall*.

Be it further remembered, that, before the defendant read the foregoing evidence to the jury, the plaintiff objected to the reading of the same on the ground that the said defendant, on the 30th of May, 1840, filed on the equity side of this court his certain bill against said Benjamin D. Harris, to which said plaintiff, on the 5th November, 1844, filed his answer, and that said defendant could not introduce evidence contradicting to said answer.

In the circuit court of the United States, for the southern district of Mississippi, June term, 1840.

To the honorable the judges of the circuit court of the United States in and for said district.

Humbly complaining, sheweth unto your honors, your orator James M. Wall, of the county of Hinds, in the State of Mississippi, that on the thirteenth day of February, in the year 1839, he became the surety of one Thacker W. Winter, who is a citizen of said State, to one Benjamin D. Harris, who is a citizen of the State of Alabama, in a bond of that date for the sum of ten thousand three hundred and ninety-one dollars and six cents, payable on the first day of January, 1840, with eight per cent. interest thereon from date until paid. The said bond was given in renewal of another bond or bonds, note or notes, executed by said Winter and others to said Harris, as he was informed and believes, for the purchase of nine or ten negro slaves by said Winter of said Harris, in the fall of the year 1836, which said slaves had been unlawfully introduced into this State, as merchandise or for sale prior to that time, and since the first day of May, in the year 1833, by the said Harris, and in pursuance of the purpose of their introduction sold to said Winter as aforesaid, and for no other consideration whatever; and he is informed, believes, and so charges, that the consideration aforesaid, for said original bond or bonds, was unlawful and void, as being a violation of the constitution of the State of Mississippi, and its fundamental policy as therein declared; and that one of the original considerations attaches to said bond given in renewal thereof, as above stated, and that collection of the same cannot be enforced.

Your orator further represents unto your honors, that suit has been instituted against him, on said above described bond, for ten thousand three hundred and ninety-one dollars and six cents, by said Harris, to the May term, 1840, of your honor's court, on the law side thereof; that process was also issued against said Winter, but was returned as to him not found. And the said Harris has joined issue to the plea pleaded by your orator, and shows no disposition to proceed further against said Winter, (who is wholly insolvent.)

Your orator further states unto your honor, that said Harris informed

him, that the consideration of the bond, on which said suit is brought, was the sale of negroes, which he had brought to this State for sale, and he charges that the same were so brought since the first day of May, 1833.

But now so it is, may it please your honor, the said Harris, well knowing that the consideration of said bond is unlawful, and that the same cannot be enforced, and well knowing that your orator is only the security of said Winter, and that said Winter is insolvent, is nevertheless seeking to subject your orator to the payment of said bond and interest as aforesaid, by the prosecution of said suit.

All which actings and doings of the said Benjamin D. Harris in the premises, are contrary to equity and good conscience, and tend to the manifest injury of your orator.

In tender consideration whereof, and inasmuch as your orator is relievable in equity, when his case is clearly and properly cognizable and relievable; and to the end that justice may be done in the premises, he prays that said Benjamin D. Harris may be made a defendant to this bill, and compelled on his corporal oath true, full, and perfect answers to make to all and singular the allegations of this bill, as fully and particularly as if the same were again repeated, and he thereto specially interrogated; and more particularly let him answer and say:

1st. What consideration is the bond, on which the suit at law is instituted, formed upon?

2d. Was not the same given in renewal of a bond or bonds, note or notes, which said Winter and others has executed to said Harris, for the purchase of negro slaves, introduced into the State as merchandise or for sale, by said Harris, since the first day of May, 1833, and sold by said Harris to said Winter, or to said Winter and others?

3d. Let the said Harris set forth, specifically, the number and names of said slaves.

4th. The price at which he sold them.

5th. When, and from whom he acquired them; and

6th. Where.

7th. To whom he sold them, and when.

8th. How they were introduced into this State, by whom, at what time, and for what purpose.

9th. Let him explain the whole transaction between himself and said Winter, from the first sale of negroes by him to said Winter, to the time when said bond was given, on which suit is now pending as before stated.

10th. Is not your orator security on said bond merely?

11th. Is not said Winter insolvent?

And your orator prays for the writ of injunction, enjoining all further proceedings in said suit at law until this bill shall be answered, and the matters thereof finally heard and determined; and that upon such hearing, your honors will decree that the bond on which said suit at law is instituted shall be surrendered up to your orator to be cancelled, and that the said plaintiff may thereby be perpetually enjoined from

proceeding to judgment in said cause, or in any manner prosecuting said suit further, and your orator prays for the writ of subpœna, &c.; and as in duty bound, he will ever pray, &c.

JAMES M. WALL.
MAYES & CLIFTON, *for complainants*.

Sworn to and subscribed in open court, May 25th, 1840.
WILLIAM BURNS, *Clerk*.

The answer of Benjamin D. Harris to a bill of complaint, filed against him by James M. Wall, in the circuit court of the United States for the southern district of Mississippi, to the November term, A. D. 1842.

This respondent, saving and reserving, &c., for answer to the said bill of complaint, says, it is true that he received from Thacker W. Winter, on the 13th of February, in the year 1839, a bond of that date for the sum of ten thousand three hundred and ninety-one dollars and six cents, and that the said James M. Wall, complainant, was surety in the said bond; that respondent instituted suit on the said bond, as stated in the said bill of complaint; respondent further admits, that the said bond was given by the said Winter and Wall in renewal of a note, executed in the year 1838, for about the same amount with the said bond. Respondent denies, however, that the said note, for which the said bond was given in renewal, was executed in consideration of slaves purchased by the said Winter of respondent, as is stated in the said bill; respondent states that the said note, executed in the year 1838, was given for the following consideration, and none other whatever: respondent held at that time the written obligation of one D. Hardeman, for the payment of about fifty hundred or six thousand dollars, which debt of the said Hardeman the said Winter, by some agreement and arrangement between him and the said Hardeman, not known to respondent, agreed to pay upon respondent releasing the said Hardeman from his said obligation, which he then did, and also in consideration of respondent's releasing the said Hardeman from his said obligation, which he then did; and also in consideration of the said three negroes sold to him by respondent as aforesaid, executed and delivered the said note to this respondent; and respondent states positively, that this was the whole consideration of the said note executed in 1838, and for which the said bond, sued on as aforesaid, was executed by the said Winter and the said Wall as surety for the said Winter. Respondent positively denies that the said negro slaves, sold by him as aforesaid to said Winter, were introduced by respondent, or any person for him, into this State; but he states that they were brought by respondent in the State of Mississippi, previous to the said sale by him to the said Winter.

And in answer to the specific interrogatories proposed in the said bill of complaint, respondent answers:

To the first interrogatory. That the consideration of the bond, sued on as aforesaid, was a note of about the same amount with the said bond, executed and delivered by said Winter to this respondent.

To the second interrogatory. That the said bond was given in renewal of a note as above set forth, but that the said bond was not given in renewal of a note or notes, or bond, or of either, executed by said Winter to respondent for the purchase of slaves introduced into this State for merchandise or sale by respondent, or any person for him, since the first day of May, 1833, or at any other time.

To the third interrogatory. That this respondent sold three slaves to said Winter, as stated before, which formed a part of the consideration of the said note executed in 1838, but that respondent does not and cannot now recollect their names; they were a man, a woman, and a boy.

To the fourth interrogatory. That defendant does not and cannot now recollect the prices at which the said slaves were severally sold; the *agre*gate price was three thousand dollars, or a little upwards, respondent cannot recollect precisely what.

To the fifth and sixth interrogatories. That respondent bought the said three negro slaves during the winter of 1836 and 1837. Said negro man respondent bought from one Spencer, in Hinds county, in this State; the said negro boy from one Hatcher, in Madison county, in this State. Respondent cannot now recollect from whom or where he bought the said negro woman.

To the seventh interrogatory. That respondent sold all of the three negro slaves to said Winter, as aforesaid, in the winter of 1836 and 1837.

To the eighth interrogatory. That respondent does not know, nor has he ever heard, by whom, at what time, or for what purpose, the said negroes were introduced into this State.

To the ninth interrogatory. That the said bond, sued on as aforesaid, was given in renewal of a note of about the same amount, executed, in 1838, by the said Winter to respondent, and the said note of 1838 was executed by said Winter to respondent, and, to the best of respondent's recollection and belief, in the winter of 1836 and 1837, and was executed in consideration of three slaves, sold as aforesaid by respondent to said Winter; and also in consideration of respondent's releasing one D. Hardeman from his obligation to respondent for the sum of fifty-five hundred or six thousand dollars. Respondent does not recollect when, and which sum the said Winter assumed to pay to respondent. The consideration for which the said obligation was *contrated* by the said Hardeman to this respondent, was the number of slaves which respondent had sold to the said Winter in the year 1835, and which slaves respondent had previously bought from one Franklin, in Madison county, in the State of Mississippi, in the year 1835. Respondent cannot now recollect the number of the said slaves last mentioned. The said slaves last mentioned, as sold by respondent to said Winter, and for which he took said Hardeman's obligation, were not, nor were any of them, introduced by this respondent into the State of Mississippi.

To the tenth interrogatory. Respondent answers, that the said Wall is surety on the said bond sued on as aforesaid.

To the eleventh interrogatory. Respondent answers, that he has understood that the said Winter is insolvent, and he believes it to be the fact. And this respondent, having answered fully all the allegations in the said bill of complaint, prays that the said injunction, granted in this cause, may be dissolved, and this respondent hence dismissed, with his reasonable costs, &c.

BENJ. D. HARRIS.

UNITED STATES OF AMERICA,
Southern district of Mississippi, sct:

Personally appeared Benjamin D. Harris, before me, the undersigned commissioner, &c., and made oath that the matters and facts set forth in the aforegoing answer, upon his own knowledge, are true, and so far as they are set forth upon the information of others, he believes to be true.

BENJ. D. HARRIS.

Sworn to and subscribed before me, this 2d November, 1844.
HENRY GREEN, *Comm'r.*

Which objection the court overruled.

Be it further remembered, that, after the defendant had read the said evidence to the jury, the plaintiff offered to read the answer to the said bill in evidence to the jury; but the court, on objection of the defendant, refused to permit the same to be read; to which several opinions of the court the plaintiff excepts, and prays that this his bill of exceptions be signed, sealed, and enrolled, which is done accordingly.

S. J. GHOLSON. [SEAL.]

Therefore, it is considered by the court, that the said plaintiff, Benjamin D. Harris, recover against the said defendant, Thacker W. Winter, the said sum of ten thousand three hundred and ninety-one dollars and six cents, the debt in the declaration mentioned, and the sum of four thousand seven hundred and seventy-nine dollars and eighty-eight cents, for his damages, which he has sustained by reason of the detention of said debt; and also his costs and charges by him about this suit in this behalf expended. And that the said defendant Wall go hereof hence without day.

And the said defendant, Thacker W. Winter, in mercy, &c.

UNITED STATES OF AMERICA,

Southern district of Mississippi, circuit court U. S.:

I, William H. Brown, clerk of said circuit court, do hereby certify, that the foregoing eighteen pages contain a full, true, and complete transcript of the record of the judgment in the case therein named, as the same now remains of record in my office.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said court, this 10th day of May, A. D. 1845, and of [SEAL.] the independence of the United States the 69th.

W. H. BROWN, *Clerk*.

To the clerk of the circuit court U. S., southern district of Miss.:

Let a writ of error issue as prayed for, on B. D. Harris's filing the writ of error bond approved by me this day.

P. V. DANIEL.

May 12th, 1845.

UNITED STATES OF AMERICA,

Southern district of Mississippi, sct:

Know all men by these presents, that we, Benjamin D. Harris, John L. Harris, and Pryor Lea, are held and firmly bound unto James M. Wall, in the just and full sum of two hundred and fifty dollars, lawful money of the United States, to be paid to the said James M. Wall, his lawful attorney, executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the 12th day of May, A. D. one thousand eight hundred and forty-five.

The condition of this obligation is such, that whereas, at a term of the circuit court of the United States, for the southern district of Mississippi, commenced and held at the city of Jackson, on the first Monday of November, A. D. 1844, judgment was rendered by said court in favor of the said James M. Wall, against the said Benjamin D. Harris, for costs of suit, and the said Benjamin D. Harris has sued out a writ of error from the Supreme Court of the United States to reverse said judgment.

Now, if the said Benjamin D. Harris shall prosecute his said writ of error to effect, and shall well and truly pay and satisfy the amount of said judgment, and all such costs as the said Supreme Court of the United States shall adjudge in the premises, if he, the said Benjamin D. Harris, shall fail to make his plea good, then and in that case this obligation to be void, otherwise to remain in full force and virtue.

BENJ. D. HARRIS, [SEAL.]
Pr. J. L. HARRIS, *Att'y*.
J. L. HARRIS, [SEAL.]
PRYOR LEA. [SEAL.]

Sealed and delivered in presence of—
W. H. BROWN.

Approved by me.
Sig'd, P. V. DANIEL.

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the judges of the circuit court of the United States for the southern district of Mississippi, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between Benjamin D. Harris, plaintiff, and James M. Wall, defendant, a manifest error hath happened, to the great damage of the said plaintiff, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in his behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, the first Monday of May, in the year of our [L. S.] Lord one thousand eight hundred and forty-five, and of the independence of the United States the 69th.

WM. H. BROWN,
Clerk circuit court U. S., southern district of Miss.

Issued the 12th day of May, A. D. 1845.

The President of the United States, to James M. Wall, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at Washington on the first Monday of December next, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States, for the ninth circuit and southern district of Mississippi, wherein Benjamin D. Harris is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Peter V. Daniel, one of the judges of the circuit court of the United States, for the southern district of Mississippi, this 12th day of May, in the year of our Lord one thousand eight hundred and forty-five, and in the 69th year of the independence of the United States.

P. V. DANIEL.